Supreme Court, U.S.
FILED
05-271 AUG 25 2005
OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DEBRA F.

Petitioner,

vs.

STATE OF WISCONSIN

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court of Wisconsin

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. DO THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT AND FUNDAMENTAL TENETS OF STATUTORY CONSTRUCTION REQUIRE THE STATE TO PROVE BEYOND A REASONABLE DOUBT THAT "ACTIVE EFFORTS HAVE BEEN MADE TO . . . PREVENT THE BREAKUP OF THE INDIAN FAMILY" IN ACCORDANCE WITH § 1912(D) OF THE INDIAN CHILD WELFARE ACT, 25 U.S.C. §§ 1901 ET SEQ., IN TERMINATION OF PARENTAL RIGHTS PROCEEDINGS INVOLVING INDIAN CHILDREN?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Debra F., a mother whose parental rights were terminated as to her son, Branden F., by the State of Wisconsin, respectfully moves this Honorable Court to issue a Writ of Certiorari to review the unpublished opinion of the Wisconsin Court of Appeals entered on March 22, 2005, and the Wisconsin Supreme Court Order entered on June 1, 2005, denying Debra F.'s Petition for Review.

OPINIONS BELOW

The opinion of the Wisconsin Court of Appeals affirming the trial court's termination of Debra F.'s parental rights as to her son, Branden F., is unofficially reported at 2005 WI App 88, 695 N.W.2d 905, and appears in Petitioner's Appendix at A-1 to A-16. The Order of the

Wisconsin Supreme Court denying Debra F.'s Petition for Review appears in Petitioner's Appendix at B-1 to B-2.

STATEMENT OF THE BASIS FOR JURISDICTION

1. The opinion of the Wisconsin Court of Appeals sought to be reviewed was rendered on March 22, 2005.

2. Petitioner's timely Petition for Review to the Wisconsin Supreme Court was denied on June 1, 2005.

3. Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(a) and Rules 10(b) and (c) of the Supreme Court of the United States. The Wisconsin Court of Appeals' decision to affirm the trial court's adoption of the burden of clear and convincing evidence under § 1912(d) of the Indian Child Welfare Act is inconsistent with decisions of other state courts of last resort, and is in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This Petition concerns the required burden of proof under § 1912(d) of the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., and the Due Process Clause of the Fourteenth Amendment.

U.S. Const. amend. XIV, § 1

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1257

State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

25 U.S.C. § 1901

Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal Responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article 1 of the United States Constitution provides that "The Congress shall have Power *** To regulate Commerce *** with Indian tribes [footnote omitted]" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

25 U.S.C. § 1902

Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

25 U.S.C. § 1912

. . .

(d) Remedial services and rehabilitative programs; preventative measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damages to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the